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Attorneys for Defendant Michael J. Miske, Jr.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	Case No. 19-cr-00099-DKW-KJM.
)	
Plaintiff,)	DEFENDANT MICHAEL J. MISKE
)	JR.'S MOTION FOR LEAVE UPON
v.)	SHOWING OF GOOD CAUSE TO
)	FILE MOTION TO MODIFY
MICHAEL J. MISKE, JR.,	(1)	CONDITIONS OF DETENTION TO
JOHN B. STANCIL,	(2)	PERMIT DEFENDANTS TO
DAE HAN MOON,	(5)	PREPARE FOR TRIAL WITH A
PRESTON M. KIMOTO,	(6)	REASONABLE SCHEDULE OF
JARRIN K. YOUNG,	(11)	JOINT MEETINGS OF
DELIA FABRO-MISKE,	(12)	DEFENDANTS AND THEIR
JASON K. YOKOYAMA	(13))	COUNSEL

Defendants.

MOTION FOR LEAVE TO FILE UPON A SHOWING OF GOOD CAUSE
MOTION TO MODIFY CONDITIONS OF DETENTION TO PERMIT
DEFENDANTS TO PREPARE FOR TRIAL WITH A REASONABLE
SCHEDULE OF JOINT MEETINGS OF DEFENDANTS AND THEIR COUNSEL

Mr. Miske seeks leave to file his own motion to modify or rescind separation orders that prevent him and all trial co-defendants from having joint defense meetings to prepare for trial. Mr. Miske seeks leave to move the Court to order a reasonable schedule of joint defense meetings involving all remaining trial defendant separatees (if any) and their counsel together with pretrial released trial defendants and their counsel. Mr. Miske further seeks leave to request that the Court direct the parties to engage in discussions towards reaching an agreement to permit such joint defense meetings at the Federal Detention Center and/or the United States Courthouse. If agreement cannot be reached within one week from the date of the Court's order, then undersigned counsel requests that the Court itself issue a reasonable schedule of joint defense meetings with defendants and their counsel.

Good cause exists to grant leave to file. First, the issue is an important one and one that has direct bearing on continuing preparations for the January 8, 2024 trial date and the new scheduling order filed on July 12, 2023. ECF No. 906. As counsel for Mr. Miske set forth in his joinder reply, the Sixth Amendment effective assistance of counsel prong recognizes the need for joint defense arrangements in complex, multi-defendant, multi-conspiracy prosecutions which includes a reasonable schedule of joint defense meetings involving all separatees and counsel together with defendants on pretrial release and their counsel. ECF No. 904, PageID.7519-7526. Second, counsel requested "leave to address the Court regarding Sixth Amendment issues pertaining to the separatee orders at the hearing on Mr. Stancil's motion and Mr. Miske's joinder therein." ECF No. 890, PageID.7385. The government's response indicates that

“Miske’s joinder motion hints at an interest in challenging Miske’s own separations more broadly” and “if that is what Miske hopes to present to this Court, it goes beyond what Stancil has requested (i.e. a lifting of Stancil’s separations with co-defendants) and Miske should file his own motion.” ECF No. 899, PageID.7446. This is precisely what Miske seeks leave to do: file his own motion seeking such relief together with other relief regarding joint defense meetings with all trial defendants and counsel. Third, the Court set a schedule upon filing the joinder motion: opposition due July 5, 2023; reply due July 11, 2023, which the parties met. ECF No. 894. The Court further set a hearing for July 17, 2023. *Id.* On July 12, 2023, the Court filed its scheduling order which provides that “Motions, other than motions to suppress and motions in limine, are CLOSED, absent leave of Court on a showing of good cause.” ECF 906, PageID.7546. Having denied Miske’s joinder under CrimLR12.4 today, July 14, 2023, ECF No. 911, PageID.7561, Mr. Miske seeks leave to file his own motion upon a showing of good cause following the Court’s interpretation of the procedural rule regarding substantive joinders.¹

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¹ Prior to the Court’s interpretation of CrimLR 12.4, Mr. Miske had understood the term “substantive joinder” to be defined by reference to General and Civil Local Rule 7.7, which defines “substantive joinder” as “a joinder that is supported by a memorandum that complies with LR7.4(a) and (b) supplementing the motion or opposition joined in.” Since Mr. Miske’s joinder in the portion of Mr. Stancil’s motion which seeks “to modify or rescind separation orders that prevent him and co-defendants from having joint defense meetings to prepare for trial[,]” (ECF No. 890, PageID.7385,[quoting ECF No. 885-1, PageID.7205-7208]), was not supported by a memorandum supplementing Mr. Stancil’s motion, he viewed it as a timely no-substantive order.

For these reasons, Mr. Miske requests that the Court grant him leave to file his motion with supporting points and authorities.

DATED: July 14, 2023 *Michael J. Kennedy*
MICHAEL J. KENNEDY
Lynn E. Panagakos
LYNN E. PANAGAKOS
Counsel for defendant
MICHAEL J. MISKE, JR (01)

CERTIFICATE OF SERVICE

I, Lynn E. Panagakos, hereby certify that by this filing through the court's electronic filing system, all counsel of record have been served with this document

DATED: July 14, 2023, at Honolulu, Hawai`I

/s/ *Lynn E. Panagokos*
Lynn E. Panagakos